

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| In the Matter of the Application of   | ) |                      |
|                                       | ) |                      |
| Amendment of Section 73.622(i),       | ) | MB Docket No. 18-320 |
| Digital Television Broadcast Stations | ) | RM-11817             |
| (Morehead and Richmond, Kentucky)     | ) |                      |

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: October 18, 2018**

**Released: October 18, 2018**

Comment Date: [15 days after date of publication in the Federal Register]

Reply Comment Date: [25 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a petition for rulemaking (Petition) filed by ION Media Lexington License, Inc. (ION or Petitioner), licensee of digital television station WUPX-TV, channel 21, Morehead, Kentucky (WUPX).<sup>1</sup> ION requests an amendment of the DTV Table of Allotments to delete channel 21 at Morehead, Kentucky, and substitute channel 21 at Richmond, Kentucky.<sup>2</sup> ION further requests modification of WUPX’s license to specify Richmond as its community of license pursuant to Section 1.420(i) of the Commission’s rules (the Rules).<sup>3</sup>

2. Section 1.420(i) of the Rules provides that the Commission, during a rulemaking proceeding to amend the Table of Allotments, may modify a station’s license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>4</sup> The Commission will apply this procedure in the limited circumstances where: (1) the new allotment will be mutually exclusive with a station’s existing allotment; (2) the new allotment will result in a preferential arrangement of the allotments according to the Commission’s television allotment

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<sup>1</sup> Petition for Rulemaking of ION Media Lexington License, Inc., as amended (filed October 5, 2017) (Petition). We note that WUPX’s correct channel is channel 21 at Morehead, Kentucky, not channel 25 as stated in the Petition.

<sup>2</sup> *Id.*; see 47 CFR § 73.622(i).

<sup>3</sup> Petition at 1.

<sup>4</sup> 47 CFR § 1.420(i); see *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4873, para. 22 (1989) (*Change in Community R&O*) (“[W]e will amend the Commission’s rules to provide a procedure whereby a licensee or permittee may petition the Commission for an amendment to the FM and television tables of allotments, and modification of its license accordingly, without placing its existing authorization at risk”), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*Recon MO&O*).

priorities; and (3) the new allotment will not deprive a community of its sole local transmission outlet.<sup>5</sup>

3. First, the proposed reallocation is mutually exclusive with WUPX's current allotment because it is based on the technical specifications currently authorized for WUPX, which ION is currently not proposing to change.<sup>6</sup> Second, ION asserts that the proposed reallocation represents a preferential arrangement of allotments under the Commission's second allotment priority by providing Richmond with its first local transmission service.<sup>7</sup> ION explains that Richmond not only qualifies as a community for allotment purposes, but also is a much larger community than Morehead and is deserving of its first local transmission service.<sup>8</sup> ION notes that Richmond (population of 31,364, compared to Morehead's population of 6,845) is the third largest city in the "Bluegrass Region" and is the county seat of Madison County, Kentucky.<sup>9</sup> ION also notes that Richmond has an active government, which "oversees municipal services such as the Richmond Fire Department, the Richmond Police Department, [the] Richmond Recycling Plant, and Richmond [u]tilities (including [w]ater, [g]as[,] and [s]anitary [s]ewer services)."<sup>10</sup> Furthermore, according to ION, Richmond has a local newspaper service; a regional airport; two libraries; two performing arts centers; four hospital/medical centers; five museums; six radio stations; six historical sites; over 50 places of worship; several public, private, and technical/trade schools; numerous state and local parks; and is home to the Eastern Kentucky University.<sup>11</sup> Finally, ION asserts that the proposed reallocation will not deprive Morehead of its sole broadcast station as it will continue to be served by station WKMR(TV), licensed to Kentucky Authority for Educational TV, on channel \*15 at Morehead.<sup>12</sup>

4. We believe that ION's proposal warrants consideration. Accordingly, we seek comments on the proposed amendment to the DTV Table of Allotments in Section 73.622(i) of the Rules as seen below:

| City and State     | Channel No. |          |
|--------------------|-------------|----------|
|                    | Present     | Proposed |
| Morehead, Kentucky | *15, 21     | *15      |
| Richmond, Kentucky | -           | 21       |

<sup>5</sup> *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28. The Commission determines a preferential arrangement of the allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952). The Commission will entertain a request to waive the prohibition on the removal of local service in the rare circumstances where such a removal might serve the public interest by, for example, providing a first reception service to a significantly sized population. *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

<sup>6</sup> See Petition at 1-2.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> *Id.*

<sup>9</sup> Petition at 3, n. 7.

<sup>10</sup> Petition at 3-4.

<sup>11</sup> Petition, Exhibit B.

<sup>12</sup> Petition at 4.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before 15 days after publication in the Federal Register and reply comments on or before 25 days after publication in the Federal Register. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. Failure to file may lead to denial of the request. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 CFR Section 1.420(a), (b) and (c)). Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner as follows:

ION Media Networks, Inc.  
Terri McGalliard  
601 Clearwater Park Road  
West Palm Beach, FL 33401

6. Parties must file an original and a copy of each filing.<sup>13</sup> Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters Building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, Maryland 20701. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to FCC Headquarters at 445 12th Street, S.W., Washington, D.C. 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs/>. Online filing is optional. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.<sup>14</sup> **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.**<sup>15</sup> **Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

7. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554. All filings are also available at <https://www.fcc.gov/ecfs/>.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any

<sup>13</sup> See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, Report and Order, 26 FCC Rcd 1594, 1602, para. 21 (2011).

<sup>14</sup> 47 CFR § 1.419(d).

<sup>15</sup> See 47 CFR § 1.7.

proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

9. For further information concerning the proceeding listed above, contact Darren Fernandez, Video Division, Media Bureau, at [darren.fernandez@fcc.gov](mailto:darren.fernandez@fcc.gov). For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

10. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and 47 CFR Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the DTV Table of Allotments, 47 CFR Section 73.622(i).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau